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April 15, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90
Technology Transitions, GN Docket No. 13-5
Written Ex Parte Presentation

Dear Ms. Dortch:

On behalf of the Wireless Internet Service Providers Association (“WISPA”), this letter describes WISPA’s proposal for modernizing the eligible telecommunications carrier (“ETC”) designation process. By implementing the approach detailed below, the Commission would both streamline the process and expand eligibility to include entities that are not yet ETCs so they can participate in three Connect America Fund (“CAF”) programs: (1) a CAF Phase II competitive bidding process, (2) the Remote Areas Fund (“RAF”), and (3) the rural broadband experiment program.

Pursuant to Section 254(e) of the Communications Act of 1934, as amended (the “Act”), a company must be an ETC in order to receive universal service support. Although support in some CAF programs has been targeted to price cap carriers, other programs are not so restricted and could allow participation by other companies that are, or may become, ETCs.

In the *USF/CAF Transformation Order*, the Commission asked how it could modernize the ETC designation process.¹ The Commission similarly requested comment on modifications it should make to its ETC rules for the RAF.² In the Further Notice of Proposed Rulemaking seeking comment on rules for the rural broadband experiment program, the Commission

¹ *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, 26 FCC Rcd 17633 (2011) (“*USF/ICC Transformation Order*”) at ¶¶ 1089-1102.

² *Id.* at ¶ 1235.



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proposed that an applicant selected for funding that was not at that time an ETC could seek ETC designation as a condition of its funding.³

WISPA recommends that the Commission adopt a single set of rules that would be applicable to each of these programs, and to any other CAF funding program.⁴ If implemented, these rules would allow any company to obtain ETC status after being selected for funding for the specific funded area and for the specific funding program. States would have the first opportunity to designate ETCs, but ETC status would be automatically conferred if the State did not act on an ETC application within a specified period of time. The details of this proposal follow.

- A communications provider that is not an ETC would not be required to become an ETC prior to participating in the CAF Phase II competitive bidding, the RAF or the rural broadband experiment program. A provider could participate in any or all of these programs by demonstrating that it meets the requirements established for the particular program and by agreeing to become an ETC for the particular service area, the particular program and the particular funding term for which it obtains support.
- Within 30 days of being selected for funding, a provider that is not then an ETC would be required to apply to the appropriate regulatory agency for ETC designation for the funded service area pursuant to the particular funding program. Thus, and consistent with the USTelecom Proposal,⁵ the ETC designation would not be a statewide designation and would not cover all CAF programs, just the program for which the provider has been selected for support. Further, the ETC designation would automatically sunset upon expiration of the applicable funding term.
- The State (or, where applicable, the Commission) would then have 60 days to review the ETC application. The State would confirm that the applicant would advertise the availability of services and the charges using media of general distribution as required by Section 214(e)(1)(B) of the Act, satisfy applicable consumer protection and service quality standards and that its network would be able to remain functional in emergency situations. The State could also confirm that the ETC applicant has not violated State law and is otherwise fit to be designated an ETC. As recommended in the USTelecom Proposal, an ETC would not be subject to additional service obligations, such as Lifeline, unless it voluntarily agreed to assume such obligations.⁶

³ *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 13-5, *et al.*, FCC 14-5 (2014) (“*Rural Experiment FNPRM*”) at ¶ 118.

⁴ *See, e.g.*, Letter from Jonathan Banks, USTelecom Senior Vice President Law & Policy, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 and 05-337 (March 14, 2014) (“USTelecom Proposal”) (advocating ETC reform for price cap carriers).

⁵ *See id.* at 12.

⁶ *See id.* at 20.



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- If the State finds that the applicant is unqualified to become an ETC, it would inform the Commission within the 60-day review period and provide detailed reasons for rejecting the application. The applicant would have the opportunity to seek reconsideration of the adverse decision.
- If the State takes no action or fails to provide written notice of rejection within the 60-day review period, the application would be deemed granted. This would be consistent with the Commission's objectives, described in the *Rural Experiment FNPRM*, to expedite review of post-award ETC applications in order to distribute support quickly to areas where broadband access is in high demand.⁷ The State could extend the 60-day deadline by 30 days for good cause.

WISPA believes that adoption of this process would offer significant benefits. First, this approach would encourage far greater participation by companies that have the ability to deploy broadband and voice services, but are foreclosed from participating in certain CAF programs. By increasing participation, the Commission would create a more competitive environment for support under the specific rules for the support program.

Second, companies that are not yet ETCs that want to obtain support can do so without first expending the time and resources of their company and the State in obtaining ETC designation. The State would only review applications of companies that have *already* been selected for a particular area under a particular support program, and will not have to process applications for companies that may never be selected, or which may ultimately obtain support for a different geographic area (or even a different State). The proposed process thus promotes administrative efficiency, while preserving the traditional authority of the States to review and approve ETC applications.

Third, this approach would promote greater regulatory fairness. Because ETC status would be limited to the area where support is targeted, and would sunset upon expiration of the funding term, certain ETC obligations would not – and should not – continue. As USTelecom stated, “the Commission cannot reasonably require [price cap] carriers to continue providing service as a regulatory mandate after it withdraws such legacy support.”⁸ That same policy should apply equally to any ETC in any CAF program. Further, imposing continuing obligations that extend beyond the funding term would discourage participation by qualified companies that desire to compete for funding under the subject CAF program.

Fourth, this proposal would appear to enjoy support from both price cap carriers as well as existing broadband providers that may want to participate in CAF Phase II competitive

⁷ See *Rural Experiment FNPRM* at ¶ 222.

⁸ USTelecom Proposal at 9.



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bidding, the RAF and the rural broadband experiment program. The detailed and well-explained USTelecom Proposal recommends a similar process for price cap carriers, and applying the process to non-ETCs would promote principles of technological neutrality and regulatory parity. In a recent ex parte presentation, NCTA “encouraged the Commission to provide the same flexibility in the CAF Phase II eligible telecommunications carrier (ETC) designation process that it did in its recent order regarding rural broadband experiments.”⁹

In sum, WISPA believes that the approach described above would effectively and efficiently bring the ETC process in line with the benefits intended by the CAF Phase II competitive bidding, the RAF and the rural broadband experiment programs by encouraging greater competition for broadband funding.

Pursuant to Section 1.1206 of the Commission’s Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

Stephen E. Coran

cc: Dan Alvarez
Rebekah Goodheart
Amy Bender
Nicholas Degani
Priscilla Argeris
Julie Veach
Carol Matthey
Alexander Minard
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⁹ Letter from Steven F. Morris, NCTA Vice President and Associate General Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (April 10, 2014) at 2. *See also* NCTA Comments, GN Docket Nos. 13-5, *et al.* (March 31, 2014) at 5; Comments of the Utilities Telecom Council, GN Docket Nos. 13-5, *et al.* (March 31, 2014) at 9; WISPA Reply Comments, GN Docket Nos. 13-5, *et al.* (filed Apr. 14, 2014) at 5-6.